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plished the former task, which we think does not sufficiently appear in Dr. Köbner's exposition, but to him belongs the lasting credit of having fulfilled the second requirement.

ROLAND P. FALKNER.

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*The Referendum in America.* By ELLIS PAXSON OBERHOLTZER, Ph. D. Pp. 225. Publications of the University of Pennsylvania. Political Economy and Public Law Series, Vol. IV, No. 12. Philadelphia, 1893.

From time to time some political idea will take possession of the popular imagination, and have a wide run of discussion. The Australian ballot is an example resulting in great success. But each success brings a host of new claimants of more doubtful expediency. Just now the referendum is attracting a good deal of attention. It seems to be regarded as a Swiss institution, and something to be imported. Mr. Oberholtzer has done a service in pointing out, that, although not exactly in the same form as in Switzerland, it has always existed here and flourishes more or less, and with increasing vigor, in almost every State in the Union. The basis of its growth, as he says, is distrust of the State Legislatures. The tendency of State constitutional changes is to diminish the frequency and length of legislative sessions and to restrict the subjects under their control. A notable instance of this is in the matter of the city charters, discussed in Chapter IV, which shows them in some States to have been taken out of the hands of the legislatures, and left to be framed by a committee elected by the citizens, while the completed work is to be again submitted to the people for approval. Mr. Oberholtzer seems on the whole to approve of this tendency toward appeal to the people. We take the opposite view, believing that it really exaggerates the evil it is intended to cure. We cannot state this view better than in the words of a decision of the New York Court of Appeals, quoted in this book, in the case of *Barto vs. Himrod*. It should be premised that this, like all the cases quoted, turns upon the constitutionality of the referendum laws. That is of small importance, as the constitutions can be changed at the pleasure of the people. The real point to be considered is the policy of such laws, though that of course cannot come before the courts.

Mr. Justice Wilson said: "If this mode of legislation is permitted, and becomes general, it will soon bring to a close the whole system of representative government which has been so justly our pride. The Legislature will become an irresponsible cabal, too timid to assume the responsibility of law-givers, and with just wisdom enough to devise

subtle schemes of imposture to mislead the people. All the checks against improvident legislation will be swept away, and the character of the constitution will be radically changed."

The short experience—dating back no farther than this century—of government representative of universal suffrage points to the necessity of greater concentration rather than greater diffusion in the law-making power. The trouble with our legislatures is that they are chaotic bodies of precisely equal units without official leadership or guidance of any kind, and are obliged to get their work done as best they can, by compromise and trading between discordant interests. The first requisites of successful legislation are that it shall be based upon the general interest of the community, and that it shall conform to the requirements of administration. In both these points the legislatures fail utterly. They are made up of local interests working by mutual concessions, without the intervention of any representative of the whole people, or of anybody who is responsible for administration, that is the practical effect of laws when passed. To give a veto to the people upon such legislation will not help the case at all, but will merely relieve the legislation from what little sense of responsibility it now has.

The real remedy for the incapacity of the legislatures is to be sought in the other direction, that is, in widening the functions of executive power. Mr. Oberholtzer omits to notice one form of the referendum, more widely extended than any other, which has prevailed in every State, as well as in the Federal Government, since the formation of the Union, and is unlike anything else in the world, the choice of president, governors and mayors by the people. True popular government is not that where the people try to govern themselves, which always ends and must end in failure, but where they decide how and by whom they will be governed. The people, especially the best part of them, who work hard for a living, and can give but little attention to politics, are but poor judges of measures and policies, but they are excellent judges of men. The arrangement by which the inhabitants of the city, the State and the nation cast their votes, at brief intervals, for a single man at the head of executive power is perhaps the most precious political treasure which this country possesses. It accustoms the people to work together, binds them with the ties of a common interest, teaches them to submit patiently to defeat, and beyond all, brings out the force of the great mass of quiet citizens, who take but little other interest or part in politics. Yet we neutralize this great advantage almost completely by depriving the individual thus elected of all positive power. The president and the governors of the States, whether acting by themselves or by selected officials,

are the only persons who can fulfill the two requirements of successful legislation above indicated. Yet neither president nor governor, unless he will stoop to a game of intrigue, has any more positive influence upon legislation than the average citizen, his power being limited to a veto or negative, that is to saying, what shall *not* be done. The preparation of laws by responsible officials, with a referendum to the legislatures is all that is wanted to prove the truth of the saying of the Englishman, Walter Bagehot, that "if the New England States as a separate nation possessed cabinet government, they would be as renowned in the world for political sagacity as they now are for diffused happiness."

While differing from Mr. Oberholtzer in his conclusions, we are happy to bear testimony to the great value of his work in promoting the study of our State governments, which form, as Mr. Bryce justly says, one of the most fertile fields for the political student which have ever existed.

GAMALIEL BRADFORD.

*Boston.*

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*Report of Counsel to Revise the Tax Laws of the State of New York.*

By CHAS. A. COLLIN and J. NEWTON FIERO, Counsel. Transmitted to the Legislature, February 3, 1893. Pp. 125. Albany, 1893.

*Report of Joint Committee of the Senate and Assembly Relative to Taxation for State and Local Purposes.* Transmitted to the Legislature, March 17, 1893. Pp. 602. Albany, 1893.

These two reports naturally supplement each other and together form a most valuable commentary on the present taxing system of the State of New York.

The tone of the first is exceedingly conservative. In twenty-four pages various rival theories respecting State taxation are passed in review and the system existing in New York is criticised. The Counsel declare that the "present system of taxation is unfair, unjust and inequitable." Equity demands that either all personal property shall be reached and subjected to assessment or personal property shall be entirely exempt. The latter alternative is dismissed as ultra-radical. To effect the former the Counsel have drafted a comprehensive tax law, which is appended to their report. The reforms which this law is designed to effect are almost exclusively administrative. Finding even political economists at loggerheads on questions of theory, it has seemed most desirable to the Counsel to propose a law designed to make the best of the system of taxation already existing. Judged from this point of view nearly all of the changes which they propose are in the right direction.